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IN THE SUPREME COURT OF ILLINOIS

No. 32855

HAYES FREIGHT LINES, INC.,
Plaintiff-Appellant,

vs.

CASTLE, ATTORNEY GENERAL, ET AL.,
Defendant-Appellees

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiff-appellant, Hayes Freight Lines, Inc., submits herewith its statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment and orders of the Supreme Court of Illinois entered in this cause.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in 2 Ill. 2d 58, 117 N. E. 2d 106 (1954). A copy of that opinion is attached hereto as Appendix A.

Jurisdiction

The judgment of the Supreme Court of Illinois was entered on January 20, 1954. A petition for appeal is presented to the Supreme Court of Illinois herewith, to-wit, on April 15, 1954. The Supreme Court of Illinois is the high-

est and final court of appeal for any issue in Illinois. The decision entered on January 20, 1954, was upon rehearing of the original decision of that court, but the decision upon rehearing in no way amended, modified or changed the original decision in respect to the issues urged in this appeal.

The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1257(2), 2101(c), and 2104. Section 1257(2) provides that

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court, as follows: * * * (2) By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

This cause was instituted by an action for a declaratory judgment and injunction to enjoin the enforcement of a statute of the State of Illinois. In both the Circuit Court of Marion County, Illinois, where the action initiated, and the Supreme Court of Illinois, appellant urged that Section 132.02 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, chapter 95½, par. 229b, 1951 Illinois Session Laws, p. 1361) was invalid under the equal protection and due process clauses of Amendment XIV of the Constitution of the United States. The Supreme Court of Illinois considered the issues thus raised and decreed that the statute was not violative of the due process and equal protection clauses of said Amendment XIV. In sustaining the statute as applied to the suspension of intrastate operating rights and privileges of commercial motor vehicle carriers against a direct challenge that the statute was repugnant to the specified clauses of the Constitution of the

United States, the decision provides the jurisdictional basis for an appeal under Section 1257(2) above quoted. The decision of the Supreme Court of Illinois ordered that the cause be remanded for the entry of judgment in accordance therewith.

The State Court Decision Is Final and Appealable

The decision of the Supreme Court of Illinois was on rehearing, thus exhausting all avenues of further review by that court. The determination of the validity of the statute is thus a final decision by the highest and last court of review in Illinois. Since this was a suit for a declaratory judgment as to the validity of the statute, the issue of validity must be treated as having been finally adjudicated as far as the courts of Illinois are concerned. Declaratory judgments as determined in the highest state court have been recognized as reviewable by the Supreme Court of the United States since *Nashville, C. & St. L. R.* v. *Wallace,* 288 U. S. 249, 53 Sup. Ct. 345 (1932).

Moreover, as injunctive relief was also sought in the state courts against the pending proceedings to suspend appellant's motor carrier operating privileges, there is a "case or controversy" within the meaning of that term for the purpose of establishing appellant's right of appeal. The continuation of the proceedings in the Circuit Court of Marion County, Illinois, for the suspension of appellant's operating privileges was awaiting only the decision of the Supreme Court of Illinois as to the validity of the statute. It now awaits the final determination of the Supreme Court of the United States in respect to the validity of the statute as applied both to interstate and intrastate operating rights. Appellant has valuable properties in the State of Illinois employed in intrastate commerce. The use and value of these properties would be directly, substantially and adversely affected if the statutory power of suspension in

dispute is finally sustained. Appellant's appeal is thus based upon a real threat to its property and the decision of the state court which sustains the validity of the statute has an immediate bearing upon its property. The threat to property interests was adjudged to be a sufficient "case or controversy" in *Nashville, C. & St. L. Ry.* v. *Wallace*, supra, and in *United States* v. *West Virginia*, 295 U. S. 463, 55 Sup. Ct. 789(1935).

The decision is final also in the sense that there has been a complete disposition of the issues bearing upon the validity of the statute, upon which the further prosecution of appellant under the statute depends. In the continuation of the pending prosecution against appellant in the Circuit Court of Marion County, Illinois, the constitutional issues having been finally determined by the highest appellate tribunal in Illinois, all that remains are fact determinations on the issue of violation. Under the decree of the Supreme Court of Illinois, in respect to the constitutional issues, the Circuit Court of Marion County is left only with the ministerial task of entering a judgment in accordance with the directions given. Thus the dual requirement for the finality of a judgment that "it must be subject to no further review or correction in any other state tribunal [and] must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein" (*Market Street Ry. Co.* v. *Railroad Commission*, 324 U. S. at page 551) have been met for there has been a final determination of the constitutional issues by the Supreme Court of Illinois.

Statement in Compliance With the Third Paragraph of Rule 12 (1)

Appellant raised the federal due process issue in the Circuit Court of Marion County, Illinois, in the Complaint filed in said court by appellant on March 24, 1953. This

complaint may be found in the abstract of the record of the lower court.

On page 8 of Appellant's Abstract of the Record in the Supreme Court of Illinois, appellant alleged that "Section 229(b) deprives plaintiff of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States," on the grounds that "Such statute is unconstitutional in that it is vague, ambiguous and indefinite in that it does not set forth with sufficient certainty standards or guides by which the Court can determine that a commercial vehicle operator has habitually operated * * * in violation of Section 131 * * *, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States."

At page 9 of said record, appellant contended that the statute violated federal due process because the test for habitual violation was harsh, oppressive, unreasonable, discriminated against the larger operators, and "the penalty provided for is unconstitutional for the reason that it provides for an arbitrary, discriminatory, unreasonable and oppressive test upon which to base a suspension . . . and thus deprive plaintiff of its property without due process of law and denies to it equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States." The appellant also alleged the denial of equal protection under the Fourteenth Amendment in the above-quoted part of the record (Page 9 of the record, paragraph one).

On defendant's motion to dismiss the trial court entered an order of dismissal on the grounds that "said complaint fails to state a cause of action. 3. That sub-paragraphs (d), (e), (g), (h) and (i), Section 229(b), Chapter 95½, Illinois Revised Statutes, 1951, are constitutional and in full force and effect." This decision of the court is to be found in the order of dismissal at page 17 of the record.

Appellant chose to abide by its complaint and the Circuit Court thereupon dismissed the complaint. Appeal was then taken to the Illinois Supreme Court. Appellant there urged and argued the same federal issues raised in the trial court, the issues being extensively analyzed in Appellant's Brief and Argument, Appellant's Reply Brief and Argument, and Petition for Rehearing on behalf of Appellant. In its opinion the Supreme Court of Illinois expressly recognized the issues thus raised as it said: "The federal grounds relied upon are the due process, equal protection, commerce and supremacy clauses." (2 Ill. 2d at p. 63, 117 N. E. 2d 106, at p. 109).

The Supreme Court of Illinois considered and disposed of the due process arguments, in its opinion, as follows: to the contention that "the act fails to provide a 'reasonable ascertainable standard' and therefore violates . . . due process" the Court stated that "In this we see no constitutional defect." (2 Ill. 2d at p. 66, 117 N. E. 2d 106, at p. 110); the Court dismissed appellant's contention that the statute unreasonably included innocent and unavoidable violations in the *prima facie* case by saying that the unavoidability would be taken into account in suspension proceedings (2 Ill. 2d at p. 68, 117 N. E. 2d 106, at p. 111); and to the argument that the "penalty . . . is so disproportionate to the offense as to deprive the plaintiff of due process of law," the Court said: "We think the sanction imposed here is not disproportionate to the offense" (2 Ill. 2d at p. 69, 117 N. E. 2d 106, at p. 112). Thus were met appellant's arguments as to due process under the Fourteenth Amendment.

Appellant's argument that the provision that proof of ten violations would constitute a *prima facie* case was unreasonably discriminatory as to large operators, and appellant's urging "that the statute creates a discrimination which is invalid under the equal-protection clause of the

Fourteenth Amendment," was answered by the Court when it said: "The arguments are not impressive. We are aware of no constitutional provision which would invalidate an **absolute rule of suspension for specified violations.**" (2 Ill. 2d at p. 67, 117 N. E. 2d 106, at p. 111).

Thus all of appellant's contentions that the statute was invalid under the fourteenth amendment were expressly considered and disposed of by the Court; each time the Illinois Supreme Court upheld the validity of the statute. The Illinois Court then proceeded, on other grounds, to declare the statute invalid as to interstate commerce but valid as to intrastate commerce. The Court said: "The fact that the federally granted right of an operator to engage in interstate commerce cannot be suspended does not, however, impair the validity . . . as applied to intrastate operations." (2 Ill. 2d at p. 73, 117 N. E. 2d 106, at p. 114). The case was then sent back for the Circuit Court to enter judgment ministerially in accord with the opinion of the Illinois Supreme Court. The Court said: "It follows that the decree of the Circuit Court must be reversed, and the cause remanded, with directions to enter a decree in accordance with the opinion." (2 Ill. 2d at p. 73, 117 N. E. 2d 106, at p. 114).

It is submitted that the above references show a timely raising and preservation of the Federal issues, decision sustaining the validity of the statute by the highest court of Illinois, and a remanding of the cause for the sole purpose of allowing the lower court to perform the ministerial task of entering a decree in accord with the directions given it.

Questions Presented

There are essentially two issues presented for review:

1. Whether Section 132.02 of the Uniform Act Regulating Traffic on Highways, (section 229b, chapter 95½, Ill. Rev.

Stat. 1951, 1951 Illinois Session Laws, page 1361) violates the due process clause of the Fourteenth Amendment to the Constitution of the United States; and

2. Whether said section violates the equal protection clause of the said Fourteenth Amendment. The pertinent portions of the statute are copied below and a copy of the entire section is attached hereto as Appendix B.

All other points set forth in the Assignment of Errors are also presented here for review.

The Statute Involved

This appeal challenges the validity of Section 132.02 of the Uniform Act Regulating Traffic on Highways (Section 229b, Chapter 95½, 1951. This section may also be found in 1951 Illinois Session Laws at page 1361. The pertinent parts of this section read as follows:

> "(g) The provisions of an Act of the General Assembly entitled, 'An Act in Relation to Practice and Procedure in the Courts of This State,' approved June 23, 1933, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as herein otherwise provided or except when inconsistent with the provisions of this Act.
>
> "Proof that a total of ten or more convictions for violations of Section 131 of this Act have been entered during any twelve months period with respect to the operation of one or more commercial vehicles by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, shall constitute prima facie evidence that such commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act. In any proceeding brought under this section, the court shall not find that

a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of this state which did not involve any such violations.

"(i) Whenever the court shall find from the evidence that a commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act, it shall enter an order suspending the commercial vehicle operator's privilege of such commercial vehicle operator for a period of 90 days.

"If at any time thereafter in another proceeding brought under this section, the court shall find from the evidence that a commercial vehicle operator has again habitually operated in violation of Section 131 of this Act, it shall enter a similar order of suspension except that the court shall suspend the commercial vehicle operator's privilege of such commercial vehicle operator for a period of one year."

Statement of the Case

Appellant is a corporation engaged in the transportation of property by motor vehicle, as a common carrier, both in interstate commerce between points in various states, and in intrastate commerce within several states, including an extensive intrastate operation in Illinois. Its interstate operations are authorized under a certificate of public convenience and necessity issued to it by the Interstate Commerce Commission under Docket No. MC-42329. Its operations in intrastate commerce within the State of Illinois are authorized by a certificate of convenience and necessity designated L.H. 94, issued to it by the Depart-

ment of Public Works and Buildings, Division of Motor Carriers, State of Illinois.

In 1951 the Illinois legislature enacted Section 132.02 of the Uniform Act Regulating Highways (Ill. Rev. Stat. Chapter 95½, par. 229b (1951); 1951 Session Laws, page 1361) which provides for suspension of the privilege of operating a commercial vehicle upon the highways when habitual operation in violation of the maximum weight and size laws of Illinois is established. (See the statute as quoted above.) Pursuant to that Statute, an action had been brought in the Circuit Court of Marion County, Illinois, charging appellant with 157 violations of the maximum weight laws and seeking to suspend appellant's commercial operating privilege in accordance with the statute in question. During the time covered by the 157 violations, appellant's vehicles traveled approximately 9,000,000 miles in 60,000 trips over Illinois highways, transporting a daily average of about 7,500,000 pounds of property.

Appellant brought suit in the Circuit Court of Marion County, Illinois for a declaratory judgment that the statute was invalid and for an injunction to prevent prosecution under the statute. The circuit court found the statute to be valid and, on appellant's motion, dismissed the complaint. Appellant had alleged the invalidity of the statute on both State grounds and as being repugnant to the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States. Appellant appealed directly to the Supreme Court of Illinois again raising the grounds of invalidity, among others, that the Section of the statute involved was repugnant to the equal protection and due process clauses of the Fourteenth Amendment.

Plaintiff's contention as to due process under the Fourteenth Amendment was that the statute was vague and indefinite, provided no reasonable ascertainable standard

for the imposition of what would be a penalty under a penal statute, and left the determination of the standard largely in the hands of the court.

The Supreme Court of Illinois rejected this contention, holding that the statute provided readily ascertainable standards upon which suspension for habitual violation could be based.

Appellant also contended that the harshness and severity of the punishment, namely, the ninety day suspension for a first conviction under the statute, and a one year suspension for a second conviction, which, if imposed, would assure the enforced bankruptcy of appellant and the dissolution of its business, was repugnant to and violative of the due process guarantee of the Fourteenth Amendment to the Constitution of the United States. This contention was also rejected by the Supreme Court of Illinois upon the basis that "auxiliary" penalties or progressively severer penalties for repeated offenses could validly be imposed by the legislature.

Appellant also urged that the statutory prima facie test of habitual violation discriminated unreasonably against the large commercial motor vehicle operator employing hundreds or thousands of motor vehicles in daily operation on the highways of the state, especially since innocent violations resulting from "unavoidable shifting of load" are to be included in the number of convictions upon which prosecution for suspension of operating privileges may be initiated. The Supreme Court of Illinois rejected this contention, holding that the statutory provision authorizing the submission of evidence going to the "character" and "gravity" of the violations, and the percentage ratio of lawful to unlawful operations, negated the possibility of unlawful discrimination against the large operator and thus afforded equal protection of the laws. Under this conception, the court sustains as equal protection of law the im-

position of a suspension penalty for a carrier such as appellant who, on the basis of the admitted record, has a percentage ratio of one-quarter of one-percent unlawful operation, and a carrier who may have a 90% record of violation of the weight laws.

The Supreme Court of Illinois held the statute valid as applied to the suspension of intrastate operating privileges and invalid, under the Commerce Clause, as applied to the suspension of interstate operating privileges. The case was remanded with directions to the trial court to enter judgment on the basis of this distinction.

Appellant contends that the statute is invalid in its application to the suspension of intrastate operating privileges, and that the Supreme Court of Illinois erred in not holding it repugnant to the due process and equal protection clauses of the Federal constitution.

The Questions Are Substantial

A

The Penalty of Suspension of Operating Privileges for 90 days or one year is so harsh and oppressive as to violate due process.

The penalty for a first conviction under the statute is a 90 day suspension of appellant's privilege to engage in interstate commerce in Illinois.

The admitted facts show that appellant's investment in terminal facilities and motor vehicle equipment used in the conduct of its operation in Illinois both in inter- and intrastate commerce amounts to approximate $2,856,536.76. They further show that in the conduct of its business as a common motor carrier, appellant has fixed obligations with respect to payments due on mortgages in the amount of $185,-

517.56 per annum, and rentals for terminals in the amount of $233,799.67 per annum, obligations covering payments for its motor vehicle equipment amounting to $1,088,-722.10 per annum, tires and gasoline amounting to $831,-966.96 per annum and payroll obligations in the amount of $8,834,667.00 per annum. To meet the foregoing fixed obligations, rentals and other enumerated obligations, the continued operation of appellant in its inter- and intrastate business in Illinois is absolutely essential. The disruption of that business would materially impair if not entirely destroy its ability to meet these financial commitments. If appellant were prohibited from operating over the highways of Illinois for either a period of 90 days or for one year, the punitive effect of this sanction would destroy property rights of a value so excessive that it may cause its financial ruin and bankruptcy.

The fact that the decision of the Supreme Court of Illinois denies the power to suspend the interstate operating privileges of appellant in no way mitigates the severity of the penalty or the potential threat of bankruptcy. Appellant's operations in intrastate commerce in Illinois are substantial and extensive and its fixed obligations for mortgages, rental of terminals and equipment absolutely require continued operation in both its inter- and intrastate business in Illinois if financial ruin is to be averted.

In *Southwestern T. & T. Company* v. *Danahar*, 238 U. S. 482, 35 S. C. 886, the court refused to sanction the validity of a statutory penalty against a public utility which upon a cumulative basis had reached the sum of $6,300 stating that such penalty could not be imposed "without departing from the fundamental principles of justice embraced in the recognized conception of due process of law."

In *Robison* v. *Miner*, 68 Mich. 549, a statute provided a temporary disability to engage in an otherwise lawful busi-

ness in addition to assessing a fine and imprisonment. In holding the statute invalid, the court said, p. 563:

> "It is equally clear that any fine or penalty is excessive which seriously impairs the capacity of gaining a business livelihood. The penalties in this act, which are imperative and not discretionary, must necessarily break up business, and are not measured by any standard of proportion or amount. The only measure of restraint is the value of the business broken up, and this may reach tens or hundreds of thousands of dollars.
>
> "It is safe to say that throughout the United States any fine or forfeiture is unusual which has not some limitation of value. . . ."

Appellant's also urged *C. & A.R.R. Co.* v. *The People*, 67 Ill. 1, *Beckler Produce Co.* v. *American Railway Express Co.*, 156 Ark. 296, 246 S. W. 1, *Stierle* v. *Rohmeyer*, 218 Wis. 149, and *Missouri-Pacific Railway* v. *Tucker*, 230 U. S. 340, 33 Sup. Ct. 961 in support of its contention that the suspension penalty was unconscionable and oppressive. The Supreme Court of Illinois rejected the principle of these cases and offered as authority for their holding *People* v. *Kowalski*, 310 Ill. 498 and *Kelly* v. *People*, 115 Ill. 483, neither of which is analogous in principle to the statute under consideration.

In the *Kowalski* case the court sustained auxiliary penalties under the Illinois Prohibition Act such as the confiscation of a vehicle or the prohibition of the use of a building *used in connection with an illegal enterprise.* In the *Kelly* case the court sustained the progressively severer penalties imposed under the Habitual Criminal Act.

The evil of the statute in issue is not only that it imposes a penalty or forfeiture so wholly gross and disproportionate as to shock our fundamental principles of justice embraced in the recognized conceptions of due process, but also that it inflicts this penalty upon persons engaged in a

lawful business certified and sanctioned by governmental authority, striking not only at the illegally used vehicle but at the business as a whole, and including within its destructive range persons whose violations may have been innocent or merely negligent, as well as those whose violations may have been willful or grossly negligent.

The state's interest in the conservation of its highways is understandably important, but in the adjustment of those interests and the interests of a lawful industry required to use the public highways, the reasonableness of the penalty must be evaluated. Appellant contends that a suspension penalty which virtually assures bankruptcy and which in effect is a forfeiture or fine of extraordinary proportions is an unconscionable and arbitrary exercise of the police power and a violation of the due process guarantee.

B.

The Prima Facie Tests of Violation Denies Appellant the Equal Protection of the Laws.

Appellant contended that the prima facie test of 10 violations unreasonably discriminates against the large commercial motor vehicle operator. The Supreme Court of Illinois, in its opinion, disposes of this as follows:

> "We are aware of no constitutional provisions which would invalidate an absolute rule of suspension for specified violations. Provisions for suspension or revocation of drivers' licenses for specified violations of law are commonplace, and the fact that these provisons do not take into account the number of miles driven by the respective violators has not, so far as we are aware, been thought to invalidate them."

Customarily it is true, as the Court states, that an absolute, uniform rule of suspension applicable to all persons alike cannot be challenged on due process or equal pro-

tection grounds. The very fact of uniformity in the ordinary case, is the guarantee of its validity. But this is not the ordinary case; it is unique and extraordinary and has never before been the subject of judicial analysis. *In the statute under review, the very fact of uniformity creates the discrimination.* The bracketing into one class of the 1000 vehicle operator and the single truck operator renders the burdens of compliance upon the former more difficult and severe than upon the latter and makes the application of the law and the penalty discriminatory *by reason of the uniformity of the law.* This is a wholly novel situation to which the principles and standards applicable in the ordinary cases become dubious and uncertain. The analogy employed by the Court concerning the irrelevancy of the number of miles driven by a violator misapprehends the distinction, for we are not dealing here with the suspension of the personal privilege of operating a motor vehicle, but with the suspension of the privilege to carry on a lawful business. And in the conduct of a business employing 1000 vehicles and several thousand employees, the unavoidable margin of human error arising from acts which can never be completely guarded against, as well as the unavoidable and innocent violations resulting from the shifting of cargo, will necessarily place a large carrier in a position of discrimination as opposed to the small operator who can more effectively control his compliance with the law. Appellant is mindful of the difficulty of defining legislative classifications graded according to miles traveled or motor vehicle units employed, but this difficulty, which is a legislative problem, does not mitigate the fact of unequal and discriminatory application of the present law.

Therefore it is respectfully urged that the rule of uniformity urged by the Court in support of the law, as applied to new and extraordinary circumstances in which the uni-

formity *creates* the discriminatory and unequal application of the law, is not a reasonable measure of the State's power in respect to this issue.

C

The vagueness and indefiniteness of the statute, and the absence of standards defining the offense, violate the due process guarantee.

Penal statutes which provide a punishment for conduct but which fail to establish ascertainable standards by which guilt may be determined, or which are vague and indefinite, violate due process. (*Connolly* v. *General Construction Co.*, 269 U. S. 385, 46 Sup. Ct. 126.

Paragraph (g) of Section 132.02 of the Uniform Act Regulating Traffc on Highways provides that proof of 10 or more convictions for violation of the weight limitations of Section 131 of that statute, within any twelve month period, constitutes prima facie evidence that the operator has habitually operated a commercial motor vehicle or vehicles in violation of said Section 131. It further provides that the court shall not make a finding of habitual violation until it "shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, *evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations.* (Emphasis supplied.)

The elements which define the offense for which suspension of operating privileges is required are (1) character of violation, (2) gravity of the violation, and (3) the extent of the operations of the defendant which did not involve such violations.

The section offers no criteria by which either of these factors is to be judged by the court. Presumably these

standards were designed to distinguish between gross weight violations and axle overloads; and between violations which are willful, negligent, or unavoidably innocent. It is to be noted that Section 131 expressly recognizes that axle overloads may be unavoidably innocent. Nevertheless Section 132.02 does not exclude these violations in the 10 conviction prima facie test nor in the additional number of convictions which the court must consider.

What, however, is the "character" of a violation which, as an indispensable element of the offense, may result in the supension of the defendant's privileges? It is nowhere defined in a manner by which either the defendant or the court may reasonably be apprised of its meaning. If "character" of violation means to distinguish between the less objectionable axle overload and the gross overload, is the extent of the overload material? If so, the degree to which it is immaterial is wholly undefined. Does it extend to an "unavoidable shifting of load" resulting in a 50 pound overload? A 200 pound overload, a 1000 pound overload? At what point does the offense assume that "character" which constitutes an essential ingredient of the offense for which the operating privileges of the defendant shall be suspended?

The same considerations pertain to the words "gravity of such violations." Is gravity to be determined by the element of willfulness or negligence, or the innocent character of the violation? Or does it mean gravity in terms of poundage of overload and, if so, in what degree? There are no defined standards by which a defendant can be reasonably apprised whether a particular violation is "grave" or whether it is of such "character" as to invoke the punitive sanction of suspension of his driving privileges, or by which a court or jury can make the equivalent determination.

Nor is there any ascertainable standard to guide the defendant or the court in respect to the third ingredient of the offense. What is the distinctive percentage of lawful operations by which a court can properly determine whether a defendant is guilty of habitual violation of the weight laws? If, as in this case, appellant is charged with 157 violations in relation to 60,000 vehicle trips which traversed 9,000,000 miles, does the percentage factor of one-fourth of one percent violation constitute it an habitual violator? If not, what quantum of percentage increase will result in its classification as an habitual violator? Nowhere does the statute attempt to define this essential element of the offense and nowhere does it provide even a limited guide to the court as to its meaning and application.

Additional representative cases voiding penal statutes for vagueness and indefiniteness of meaning are *United States* v. *Capital Traction Co.*, 34 App. D. C. 592; *Small Company* v. *American Sugar Refining Company*, 267 U. S. 233; *Lanzetta* v. *New Jersey*, 306 U. S. 451, 59 S. C. 618; *People* v. *Estreich*, 75 N. Y. S. 2d. 267, aff'd 297 N. Y. 910).

It is submitted that the decision of the Supreme Court of Illinois fails to recognize the importance of the issues of due process and equal protection raised in this case, and that such decision results in an effective denial of due process and equal protection to the appellant. It is further submitted that the questions presented by this appeal are substantial and of general public importance, involving as they do new and drastic conceptions of the state's police power in respect to an industry which is a vital part of our national economy and well being.

Respectfully submitted,

AXELROD, GOODMAN & STEINER,
By DAVID AXELROD,
Counsel for Plaintiff-Appellant.

EXHIBIT A

OPINION

SUPREME COURT OF ILLINOIS

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the eleventh day of January, in the year of our Lord, one thousand nine hundred and fifty-four within and for the State of Illinois.

On the 20th day of January, 1954, the opinion of the Court was filed in said cause and entered of record in the words and figures, following, to-wit:

Agenda 31—Nov. 1953

No. 32855

Appeal from Circuit Court Marion County

HAYES FREIGHT LINES, INC., *Appellant,*

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, et al., etc., *Appellees*

Mr. Chief Justice Schaefer delivered the opinion of the Court:

Section 132.02 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, Chap. 95½, par. 229b) provides for suspension of the privilege of operating a commercial vehicle upon the highways when habitual operation in violation of the maximum weight and load limits fixed by section 131 of the act (Ill. Rev. Stat. 1951, Chap. 95½, par.

228), is established. Plaintiff filed a complaint in the circuit court of Marion County in which it alleged that an action had been brought in that court charging plaintiff with 157 violations of section 131, and seeking to suspend its commercial operator's privilege for ninety days. On information and belief, plaintiff also alleged that a second such action was about to be instituted to suspend its privilege for either ninety days or one year because of 144 additional violations. Asserting that the suspension provisions violate the State and Federal constitutions in respects which will be discussed, plaintiff sought a declaratory judgment that they are invalid, and an injunction to restrain the defendants, the Attorney General and the State's Attorney of Marion County, from proceeding further against the plaintiff. The circuit court found the suspension provisions valid, granted defendant's motion to dismiss the complaint, and entered an order of dismissal against the plaintiff, who appeals directly to this court.

The complaint alleges that the plaintiff is a corporation engaged in the transportation of property by motor vehicle as a common carrier, both in interstate and intrastate commerce. It operates 1929 motor vehicles, employs 2059 persons, of whom 736 are utilized in its Illinois operations, and maintains terminals at thirty-five cities in eight States. It conducts interstate operations in ten States, including Illinois, under a cerificate of public convenience and necessity issued to it by the Interstate Commerce Commission. It also operates in intrastate commerce within Illinois as a line-haul carrier, pursuant to a certificate of public convenience and necessity issued by the Division of Motor Carriers of the Department of Public Works and Buildings.

It is also alleged that during the time covered by the complaint in the suspension proceeding, plaintiff's vehicles operated approximately 60,000 vehicles trips over the highways of the State, traveling a total of 90,000,000 miles, and transporting daily 7,500,000 pounds of property, and that only two of the 157 violations charged involved "gross" overloads, as distinguished from "axle" overloads resulting from the shift of cargo during the course of operation of the vehicles.

Plaintiff further alleges that its business as a common carrier constitutes a valuable property right which requires, for its continuous existence, that a regular and uninterrupted service both in interstate and in intrastate commerce be performed, and that a suspension of its service for either ninety days or one year may result in financial ruin.

Section 132.02 alone is attacked here. Plaintiff concedes the validity of section 131, and of section 132.01 (Ill. Rev. Stat. 1951, Chap. 95½, par. 229a) which provides a schedule of fines, graduated according to the amount of excess weight, for violation of section 131.

Subsection (b) of section 132.02, which was added to the act in 1951, provides that the privilege of a commercial vehicle operator to operate upon the highways shall be suspended when he shall "habitually operate" in violation of the maximum load and weight limits of section 131. The "commercial vehicle operator's privilege" is defined by Section 132.02(a)(3) as "The privilege, recognized or conferred by any law of this state, of any person * * * to operate * * * commercial vehicles * * * upon the public highways of this state". Section 132.02 (c) provides that upon conviction of any person for a violation of section 131 the arresting officer shall report the circumstances of the arrest to the Director of the Department of Public Safety, who is required to mail a copy of the report to the person in whose name the offending vehicle is registered. Section 132.02 (d) provides that the Director of the Department of Public Safety shall notify the Attorney General whenever a total of ten convictions has been entered during any twelve months' period with respect to vehicles operated by any one operator. It then becomes the duty of the Attorney General to bring a proceeding to suspend the operator's privilege. By subsection (e), the circuit courts and the superior court of Cook County are given jurisdiction of suspension proceedings.

Subsection (g) provides that proof of a total of ten or more convictions for violation of section 131 during any twelve months' period by any one operator constitutes *prima facie* evidence that the operator has habitually op-

erated in violation of Section 131. Subsection (g) further provides that "the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations."

Subsection (i) provides that whenever the court shall find from the evidence that an operator has habitually operated one or more commercial vehicles in violation of Section 131, it shall enter an order suspending the operator's privilege for a period of ninety days. If at any time thereafter, in another suspension proceeding, the court shall find that the operator has again habitually operated in violation of Section 131, it shall enter a similar order of suspension for a period of one year. An order of suspension is enforceable by contempt proceedings (subsection (j)), and operation after suspension is a misdemeanor (subsection (l).)

The plaintiff contends that section 132.02 is invalid under the Federal and State constitutions. The Federal grounds relied upon are the due process, equal protection, commerce and supremacy clauses. The State grounds are the due process and separation of powers clauses, and the requirement of section 11 of Article II that all penalties be proportioned to the offense. We shall defer consideration of the contentions raised under the commerce and supremacy clauses of the Federal constitution until the other issues have been discussed.

Statutory provisions for suspension or revocation of licenses of all types upon proof of violation of law are so familiar as not to warrant citation. In the motor vehicle field, the Illinois provision for revocation of the ordinary driver's license for specified statutory violations (among them three convictions for violation of speed limits) (Ill. Rev. Stat. 1951, Chap. 95½, par. 35j,) is typical of provi-

sions which are uniformly regarded as permissible regulations of the use of the highways (*People* v. *Kobylak*, 383 Ill. 432; In Re *Probasco*, 269 Mich. 453, 257 N. W. 861; *Commonwealth* v. *Harris*, 278 Ky. 218, 128 S. W. 2d 579; *LaPlante* v. *State Board*, 47 R. I. 258, 131 Atl. 641; *Commonwealth* v. *Funk*, 323 Pa. 390, 186 Atl. 65; *Prichard* v. *Battle*, 178 Va. 455, 17 S. E. 2d 393.) That such provisions generally aim to foster public safety, while the primary bearing, at least, of the present provision is the protection of the highways from abuse by excessively heavy loads, cannot be a material difference. Plaintiff would also distinguish these cases on the ground that the suspension here "is directly precisely to a prohibition upon the right to engage in a lawful business." But one who uses the public highways for the conduct of his business certainly cannot on that account claim a preferred position. *Bode* v. *Barrett*, 412 Ill. 204; *Weksler* v. *Collins*, 317, Ill. 132.

Plaintiff, however, asserts that that portion of section 132.02 (g) which requires the court to consider evidence relating to the character and gravity of the violations and the extent of the operations of the defendant in determining whether there has been habitual operation in violation of the act fails to provide a "reasonable ascertainable standard" and therefore violates both due process and the separation of powers required by article III of the constitution of Illinois. Insofar as the suspension provision is conditioned upon the occurrence of a statutory offense, there is, of course, no question of indefiniteness, for the statutory maximum weight and load limits are expressed in precise units of physical measurement. But it is argued that the terms "character" and "gravity" lack precision, and that they afford no standard by which an operator who has been convicted of a violation of a statutory load limit can tell whether the violation falls "within or without the type of violation for which an operator's privilege may be suspended". As to the factor of "extent of operations", which the plaintiff describes as the "percentage relationship of violations to nonviolations," it is said that no measure is prescribed for either the court "or the operator to adjudge or determine that distinctive percentage which falls within

the prohibited category, and that which falls without it." In support of this argument plaintiff relies upon *Connally* v. *General Construction Co.*, 269 U. S. 385; *Small Company* v. *American Sugar Refining Co.*, 267 U. S. 233; *United States* v. *Capital Traction Co.*, 34 App. D. C. 592, and other cases in which statutes have been invalidated for want of definiteness.

Neither proposition is sound. It may be conceded, as the plaintiff suggests, that the standards provided do not permit an operator to know in advance whether or not his conduct, admittedly in violation of the law, will be determined to warrant a finding that he has habitually operated in violation of the act with resulting suspension. From the point of view of the operator it would obviously be desirable to know the precise conditions under which he may violate the law without incurring the risk of suspension of his license. But the desire of the operator is not equivalent to a command of the constitution. Many years ago it was pointed out that "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." Mr. Justice Holmes in *Nash* v. *United States*, 229 U. S. 373, 377.

The General Assembly is not required to establish an absolute criterion for the revocation of this privilege. It may concern itself with the quality of the conduct which is the basis of revocation. It might express that concern by attempting to enumerate all the conditions of weather, roads, and loads, and the myriad of transitory circumstances peculiar to the business of the offending carrier or to the offense which might be relevant by way of excuse or justification. But no constitutional provision requires it to do so as long as intelligible standards are established to be applied by the agency to which the determination is committed.

While the standards here fixed are expressed in general terms, they deal unmistakably with the quality of the conduct which is made the basis of suspension of the privilege. They include factors relating to the deliberate, negligent, or excusable quality of the violations which are relied upon

as a basis for revocation. In this we see no constitutional defect.

The plaintiff also contends that the determination of whether or not there has been operation in habitual violation, and hence of whether or not the privilege to operate should be suspended, is so inherently an administrative function that it cannot, under article III of the constitution, be committed to a court. In support of this argument plaintiff relies on *Borreson* v. *Department of Public Welfare,* 368 Ill. 425. The statute in that case required the court on an appeal from an administrative agency, to determine *de novo* the amount to be paid to aged persons for old-age assistance, and it was held that the function was administrative, and could not validly be committed to a court. The determinations involved in the present case, however, are of the kind which have traditionally been considered judicial. The application of generalized standards—negligence, malice, fraud, and a host of others—to particular conduct was the routine business of the courts long before administrative agencies, as we know them now, came into existence. The issues in a suspension proceeding bear a marked resemblance to the issues which courts decide daily in the administration, for example, of statutes providing for probation and indeterminate sentences. And since the procedure in suspension proceedings is governed by the Civil Practice Act, and an order of suspension is enforceable by contempt, the analogy to injunction is obvious. We hold, therefore, that section 132.02 does not violate the provisions of article III.

Plaintiff also attacks the provision that proof of ten or more convictions for violation of the load limits within twelve months shall constitute *prima facie* evidence of habitual operation in violation of the act. It is contended that this provision discriminates unreasonably against one who operates numerous vehicles on frequent trips and in favor of one who operates fewer vehicles and less frequently. Because a *prima facie* case of habitual operation in violation of the statute may be established against operators whose ratio of unlawful to lawful operations is substantially different, it is urged that the statute creates a

discrimination which is invalid under the equal-protection clause of the fourteenth amendment.

The argument is not impressive. We are aware of no constitutional provision which would invalidate an absolute rule of suspension for specified violations. Provisions for the suspension or revocation of drivers' licenses for specified violations of law are commonplace. And the fact that these provisions do not take into account the number of miles driven by the respective violators has not, so far as we are aware, been thought to invalidate them. Plaintiff's argument does no more than underscore the wisdom of the authorized inquiry into the circumstances of the violations, an inquiry which the plaintiff elsewhere in its argument so vigorously attacks.

Plaintiff next argues that the *prima facie* test violates due process because an operator may be faced with the burden of defending against a succession of suspension proceedings involving identical violations. It is suggested that an operator who has ten or more violations during a twelve-month period may be found, in view of all the circumstances, not to have operated in habitual violation of the law. Upon further convictions for violation of the load limits during the same twelve-month period, a second action under section 132.02 might be instituted and might result in the suspension of such an operator's privilege. The second suspension proceeding is occasioned, however, by the operator's continued conduct, which results in additional violations. Since these additional convictions tend to cast new light on the overall character of his operations, a re-examination of the charge of habitual violation is justified, and in such a re-examination there is no deprivation of due process.

It is also contended that the statute is fatally unreasonable in that it permits inclusion, in the ten offenses which make up a *prima facie* case, of violations due to "axle overloads", which may have been unavoidable. The argument is based upon the fact that section 131 recognizes a category of "unavoidable" axle overloads which are punished by a nominal fine of one dollar. Apart from the fact that the complaint does not allege that any of the violations with

which plaintiff is charged are of this character, the contention must fail. There is no basis for assuming that any court would refuse, in a suspension proceeding, to take into account a previous judicial determination that abnormal and unanticipated conditions made it impossible to prevent undue shifting of a particular load. Indeed, such a circumstance would seem to be peculiarly within the authorized scope of inquiry into the "character of the violation."

It is said that the penalty of suspension of operating privileges is so disproportionate to the offense as to deprive the plaintiff of due process of law and to contravene section ii of article II of the Constitution of Illinois which provides: "All penalties shall be proportioned to the nature of the offense * * *." We do not agree. The State's continuing search for effective enforcement techniques to secure compliance with valid weight limits is apparent in the legislation dealing with the subject. (See: Act of July 9, 1935, secs. 132, 135, 137, Laws of 1935, p. 1281 ff.; Act of August 6, 1949, secs. 1, 2, 3, Laws of 1949, p. 1142; Act of August 10, 1949, secs. 132, 132.02, Laws of 1949, p. 1156; Act of August 6, 1951, sec. 132.01, Laws of 1951, p. 2090.) The general assembly might infer that the truckers find the payment of statutory penalties when violation is established to be economically preferable to compliance. But the State is entitled to insist upon compliance with its valid regulations, and to shape its penalties to that end. Considerations stemming from the commerce clause of the Federal constitution apart, we see no reason why the State may not restrict the privilege of using its highways for profit to those who comply with its laws, if, because of the peculiarities of a particular load, compliance would present inordinate difficulties, provision is made for a permit to exceed the statutory limits. Ill. Rev. Stat. 1951, Chap. 95½, par. 230.

We think the sanction imposed here is not disproportionate to the offense. We have previously sustained acts which impose analogous auxiliary penalties such as the confiscation of a vehicle or prohibition of the use of a building, (*People* v *Kawoleski* 310 Ill. 498), as well as acts imposing progressively severer penalties for repeated offenses. (*Kelly* v. *People*, 115 Ill. 583). *Chicago and Alton Railroad Co.* v. *People ex rel. Koerner*, 67 Ill. 11, on which plaintiff

relies, is not authority to the contrary, for we recognized there the propriety of forfeiture in cases of successive violations.

Plaintiff's final contention is that the suspension provisions are invalid under the commerce clause and the supremacy clause of the Federal constitution. While it is conceded that the State has broad powers over the use of its highways in interstate commerce, it is argued that the power of the State does not include the suspension, even for a limited period of time, of the right to engage in interstate commerce, in the case of carriers who hold certificates of convenience and necessity under the Federal Motor Carrier Act. Because the issue presented lies within a sensitive area of State and Federal relations, we have carefully examined the statute to be sure that it was intended to apply to interstate commerce. Its scope is fixed by the definition of "commercial vehicle operator's privileges" as "the privilege recognized or conferred by any law of this state * * * to operate * * * commercial vehicles * * * upon the public highways of this state." A privilege or right to operate motor vehicles for commercial purposes in interstate commerce is clearly recognized in other statutes. (Ill. Rev. Stat. 1951, Chap. 95½, par. 220.13, par. 243.) From this fact, and from the fact that section 132.02 itself does not itself suggest any exemption of operators engaged in interstate commerce, we conclude that the suspension procedure was intended to apply to all operators whether engaged in interstate or intrastate commerce.

So construing the statute, we meet the contention that the commerce and supremacy clauses of the Federal constitution prevent the State from suspending the right to use its highways in the case of an interstate trucker who operates pursuant to a certificate of convenience and necessity from the Interstate Commerce Commission. On this issue, we find no controlling authority which is precisely in point.

The power of the State over those who use its highways in interstate commerce is extensive. It may prescribe the maximum size and weight of vehicles engaged in interstate commerce, (*South Carolina State Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177,) it may regulate their de-

sign (*Maurer* v. *Hamilton*, 309 U. S. 598), and it may impose nondiscriminatory fees. (*Hendrick* v. *Maryland*, 235 U. S. 610; *Kane* v. *New Jersey*, 242 U. S. 160). Before Federal regulation of interstate motor carriers became effective, the power of the States to suspend or revoke authority to engage in interstate commerce, as a sanction for the enforcement of State statutes regulating the use of the highways was sustained. (*Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eicholz* v. *Public Service Com.* 306 U. S. 268; cf. *Detroit-Cincinnati Coach Line* v. *Public Utilities Com.* 119 Ohio St. 324, 164 N. E. 356.) More recently, State statutes which provided for revocation as a means of enforcing the collection of taxes have been sustained without discussion of the propriety of the sanction. (*Aero-Mayflower Transit Co.* v. *Board of Railroad Comrs.* 332 U. S. 495; *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542). In *Joyner* v. *Matthews*, 193 Va. 10, 68 S. E. 2d 127, the Virginia court upheld a state which provided for suspension of the right to operate in interstate commerce for failure to pay amounts which had become due to the State by reason of violations of weight limits. The court noted, however, that suspension was there employed merely as a means of enforcing the payment of amounts due, saying, "So long as the violation is paid for at the rate fixed * * * he can continue to operate". 193 Va. at p. 15.

On the other hand, sanctions of the type here involved have frequently been invalidated under the commerce clause, even though the regulation to which the sanction attached was within the power of the State. So it has been held that payment of a tax otherwise valid may not be made a condition precedent to the right to carry on interstate business, but that enforcement must be left to ordinary collection procedures. (*Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530). Nor may nonpayment of an otherwise valid tax be made the basis of the forfeiture of a corporate franchise to engage in interstate commerce. (*St. Louis Southwestern Railway Co.* v. *Arkansas*, 235 U. S. 350.) In *Hill* v. *Florida*, 325 U. S. 538, a union business agent who failed to secure a license required by State law was enjoined from acting as a business agent. The court held that his right to act in that capacity was conferred by

the National Labor Relations Act, and that the right so granted could not be obstructed by injunction or by penalty for acting without a license. "It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining". 325 U. S. 538, 543.

Both *Welch Co.* v. *New Hampshire*, 306 U. S. 79, and *Eicholz* v. *Public Service Com.*, 306 U. S. 268, which, as noted, sustained sanctions by way of suspension or revocation in the field of highway regulation, strongly suggested that this power of the State would be superseded when the Federal Motor Vehicle Act became effective. (306 U. S. at pp. 84 and 273). The Supreme Court of Texas, in *Railroad Commission of Texas* v. *Querner*, 150 Tex. 490, 242 S. W. 2d 166, held that since control over this aspect of interstate commerce has been asserted by the Federal Motor Carrier Act, the sanction of revocation cannot be applied to an interstate trucker for violation of a valid State statute, although the opinion intimates that a different rule might be applied if the violation related to public safety or damage to the highways.

None of these determinations appears to us to be conclusive. It is true that the statute here involved applies without discrimination to interstate and intrastate carriers, and that the conduct with which it is concerned, the regulation of load limits upon the highways, is a matter of vital local concern and one which Congress has left open to regulation by the States. On the other hand, Congress has legislated in this field "to the end of developing, coordinating and preserving a national transportation system of water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." 54 Stat. 899, 49 U. S. C., note preceding Sec. 301.

Weighing the effect of the State action in this case against the announced purpose of Congress, we are of the opinion that the statute is invalid to the extent that it provides for suspension of the right to engage in interstate commerce upon the highways of the State. In the interest of establishing a national transportation system, the Federal Government has granted the plaintiff the right to engage in

commerce upon the highways of Illinois. That is the very right which is to be suspended under section 132.02. A Federal certificate of convenience and necessity to engage in interstate commerce does not, of course, imply immunity from the payment of taxes and other valid financial obligations. And so it may be that suspension for failure to meet obligations of that kind stands upon a different footing. But we do not see how an adequate national transportation system can be maintained if the comprehensive transportation network which it contemplates is to be subject to disruption by State suspension of operating rights for violation of load limits or other traffic regulations.

The fact that the federally granted right of an operator to engage in interstate commerce cannot be suspended does not, however, impair the validity of section 132.02 as applied to intrastate operations. The continuing power of the State over those operations is expressly recognized by Congress. (49 U. S. C. sec. 302(b).) The statute can operate effectively if its application is restricted to intrastate commerce. And even apart from the separability clause of the statute, (Ill. Rev. Stat. 1951, chap. 95½, par. 239), section 132.02 itself indicates the intention of the General Assembly to exert the full measure of its constitutional power to secure compliance with its valid regulations.

It follows that the decree of the circuit court must be reversed, and the cause remanded, with directions to enter a decree in accordance with this opinion.

Reversed and remanded, with directions.

EXHIBIT B

SMITH-HURD ILLINOIS ANNOTATED STATUTES, Chapter 951/2, Section 229b

§ 229b. Definitions—Suspension of commercial vehicle operator's privilege—Arrests—Successive convictions for violations of law

(a)(1) The words "commercial vehicle", as used in this section, shall mean a motor vehicle of the second division

as defined in Section 2 of "An Act in relation to motor vehicles and to repeal a certain Act therein named", approved June 30, 1919, as amended.

(2) The words "commercial vehicle operator", as used in this section, shall mean a person, firm or corporation which, as owner or lessee, operates, whether individually or through agents, servants or employees, one or more commercial vehicles, as defined herein, upon the public highways of this state, but shall not mean a person, firm, or corporation which is solely a lessor of one or more commercial vehicles.

(3) The words "commercial vehicle operator's privilege", as used in this section, shall mean the privilege, recognized or conferred by any law of this state, of any person, firm, or corporation, whether or not evidenced by any registration, license, permit or certificate and whether or not conditioned upon the payment of any tax, license fee or charge, to operate, either individually or through agents, servants, or employees, one or more commercial vehicles, as defined herein, upon the public highways of this state.

(b) The commercial vehicle operator's privilege of any commercial vehicle operator shall be suspended as hereinafter provided, when such commercial vehicle operator shall habitually operate one or more commercial vehicles in violation of Section 131 of this Act.

(c) It shall be the duty of each state highway policeman arresting any person for having operated a vehicle in violation of the provisions of Section 131 of this Act to ascertain the make, motor number, serial number and registration and any other identification number of the vehicle having been operated in violation of said section and if the person so arrested was operating as the agent, servant or employee of any person, firm or corporation, the name and address of such person, firm or corporation. Upon the conviction of any person for having operated a vehicle in violation of the provisions of Section 131 of this Act, such policeman shall report, in writing, to the Director of the Department of Public Safety (1) the date of the offense, (2) the name and residence of the driver, (3) the county in which the offense was committed, (4) the court and date

of the conviction, (5) the amount of the fine imposed, (6) the make, motor number, serial number and registration and any other identification number of the vehicle so operated in violation of law and (7) if the person so convicted was the agent, servant or employee of another person, firm or corporation, the name and address of such other person, firm or corporation. The Director of the Department of Public Safety shall transcribe the same in the records of his office and shall send a copy of such written report by United States Mail to the person, firm or corporation in whose name the vehicle mentioned in such report is registered within five days after said name becomes known to the Director. The record of any such report so transcribed may be proved by a copy thereof certified under the hand of said Director. Any such certified copy shall be prima facie evidence of the facts therein set forth, transcribed from the report of the state highway policeman, as above mentioned.

(d) Whenever it shall come to the attention of the Director of the Department of Public Safety that a total of ten convictions for violation of Section 131 of this Act have been entered during any twelve consecutive months period with respect to the operation of commercial vehicles operated by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, it shall be the duty of the Director of the Department of Public Safety to notify the Attorney General of such fact and it shall be the duty of the Attorney General to bring a proceeding in the name of the people of the State of Illinois to suspend the commercial vehicle operator's privilege of such commercial vehicle operator.

(e) Jurisdiction of such proceedings shall be in the Circuit Courts of the respective counties and the Superior Court of Cook County. The venue shall be in any county where any of the offenses referred to in Subsection (c) of this section may have occurred or as provided in an Act of the General Assembly entitled, "An Act in Relation to Practice and Procedure In The Courts of This State," approved June 23, 1933, as amended.

(f) The use and operation by any person of a vehicle over the highways of this state shall be deemed an appointment by such person of the Secretary of State, to be his true and lawful attorney upon whom may be served all legal process in any proceeding brought against him under this Act and said use or operation by him shall be signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as though served upon him personally if such person is a non-resident of this state or at the time a cause of action arises under this Act is a resident of this state but subsequently becomes a non-resident of this state. Service of such process shall be made by serving a copy upon the Secretary of State or by filing a copy in his office and such service shall be sufficient service upon such person; if notice of such service and a copy of the process are, within 10 days thereafter, sent by registered mail by the Attorney General to the defendant, at the last known address of the defendant, and the affidavit of compliance herewith of the Attorney General or an Assistant Attorney General is appended to said summons. The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The Secretary of State shall keep a record of all such processes, which shall show the day and hour of such services.

When a final order is entered against any defendant who shall not have received notice of service and a copy of the process by registered mail, required to be sent to him as herein provided, and he shall within 6 months after the entry of said decree appear in open court and file a verified petition showing that he did not receive such notice of service and copy of the process and showing facts that he has a good and substantial defense to such action, he may appear and answer the allegations of the complaint, and thereupon such proceedings may be had as if the defendant had appeared in due season and no order had been entered. If it appears upon the hearing that such order ought not to have been entered, the same may be set aside, altered or amended as shall appear just, otherwise, it shall be ordered to stand confirmed against such defendant.

(g) The provisions of an Act of the General Assembly entitled, "An Act In Relation to Practice and Procedure In The Courts of This State," approved June 23, 1933, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as herein otherwise provided or except when inconsistent with the provisions of this Act.

Proof that a total of ten or more convictions for violation of Section 131 of this Act have been entered during any twelve months period with respect to the operation of one or more commercial vehicles by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, shall constitute prima facie evidence that such commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act. In any proceeding brought under this section, the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations.

(h) The papers, entries and records of the Secretary of State of this state, and of the officer of any other state in whose office any such commercial vehicle may be registered, showing the ownership of any such commercial vehicle, may be proved by a copy thereof, certified under the hand of the Secretary of State of this state, or of said officer of such other state. Any such certified copy, when admitted in evidence, showing ownership of a commercial vehicle in a person of the same name as the defendant shall be prima facie evidence that the defendant is or was the owner of such commercial vehicle.

(i) Whenever the court shall find from the evidence that a commercial vehicle operator has habitually operated a

commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act, it shall enter an order suspending the commercial vehicle operator's privilege of such commercial vehicle operator for a period of 90 days. If at any time thereafter in another proceeding brought under this section, the court shall find from the evidence that a commercial vehicle operator has again habitually operated in violation of Section 131 of this Act, it shall enter a similar order of suspension except that the court shall suspend the commercial vehicle operator's privilege of such commercial vehicle operator for a period of one year.

(j) Whenever the court shall enter any order under the provisions of Paragraph (i) of this section, it shall have full and continuing jurisdiction after the entry of such order to enforce any of the provisions thereof by contempt proceedings.

(k) The State's Attorney of any county where any proceedings under this section are brought shall, at the request of the Attorney General, appear and assist the Attorney General; and the State's Attorney, if requested by the Attorney General, shall take over and carry on any such proceedings commenced by the Attorney General.

(l) Whenever any commercial vehicle is operated upon the public highways of this state by or on behalf of any person, firm or corporation at a time when the commercial vehicle operator's privilege of such person, firm or corporation is suspended as provided in this Act, the driver of such vehicle shall be deemed guilty of a misdemeanor, the person, firm or corporation on whose behalf such commercial vehicle is operated shall be deemed guilty of a misdemeanor, and all agents, servants, employees or corporate officers of the person, firm or corporation on whose behalf such commercial vehicle is operated, who shall have knowingly caused or permitted such commercial vehicle to be operated shall be deemed guilty of a misdemeanor, and any one or more or all of such persons, firms and corporations may be prosecuted for such violation. Any individual person convicted of such violation shall be punished by imprisonment for not less than 10 days nor more than 90 days

and in the discretion of the court, a fine of not more than $500.00. Any corporation convicted of such violation shall be punished by a fine of not less than $1000.00 nor more than $5000.00.

(m) The Director of the Department of Public Safety, within 10 days after the entry of any order suspending the commercial vehicle operator's privilege of any person, firm or corporation as provided in Subsection (i) of this section, shall send a written notice of the entry of such order to the sheriff of each county and chief of police of each municipality in this state. It shall be the duty of every peace officer to arrest the driver of any commercial vehicle which he shall observe being operated in violation of any such order of suspension. 1935, July 9, Laws 1935, p. 1247, art. XVI, § 132.02, added 1951, July 11, Laws 1951, p. 1361 § 1.

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FILED
APR 30 1954
HAROLD B. WILLEY, Cl

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 706

HAYES FREIGHT LINES, INC.,
Appellant,

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, and BASIL WILSON, State's Attorney of Marion County, Illinois,
Appellees.

APPEAL FROM SUPREME COURT OF ILLINOIS

MOTION, ALTERNATIVELY, TO NOTE PROBABLE JURISDICTION IN THIS CAUSE AND TO GRANT CERTIORARI IN CASTLE, ET AL., V. HAYES, NO. 697, OR TO DISMISS OR AFFIRM.

Latham Castle, Attorney General of the State of Illinois, and Basil Wilson, State's Attorney of Marion County, Illinois, respectfully move this Court either to note probable jurisdiction in this cause and grant *certiorari* in appellees' companion petition for *certiorari* to review other por-

tions of the same judgment of the Illinois Supreme Court herein appealed from (*Castle, et al.*, v. *Hayes Freight Lines, Inc.*, No. 697), or to dismiss this cause for want of a substantial Federal question.

Brief suggestions in support of this motion are submitted herewith.

LATHAM CASTLE,
Attorney General of the State of Illinois, and
BASIL WILSON,
State's Attorney of Marion County, Illinois,
Appellees,
By LATHAM CASTLE,
Attorney General of the State of Illinois,
Attorney for Appellees.

SUGGESTIONS IN SUPPORT OF THE FOREGOING ALTERNATIVE MOTIONS.

The Illinois Supreme Court's decision appealed from held valid generally Section 132.02 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, Chap. 95½, par. 229b) but held that section invalid in its application to interstate carriers holding a certificate of convenience and necessity under the Federal Motor Carriers' Act (49 U. S. C., secs. 301 *et seq.*).

Appellees in this cause have filed their petition for writ of *certiorari* to review so much of the Illinois Supreme Court's decision as holds the Act inapplicable to such interstate carriers.

Appellant in this cause has appealed from so much of the Supreme Court's decision as sustains the Act generally.

Illinois is willing to have the validity of the entire Act canvassed by this Court.

But if the Illinois Supreme Court's decision holding the Act inapplicable to interstate carriers holding a certificate of convenience and necessity under the Federal Motor Carriers' Act does not propound a substantial Federal question, then certainly the Illinois Supreme Court's decision holding the Act valid generally is not substantial. The only important questions arise from the incidence of the Act upon interstate commerce.

Therefore the Attorney General asks this Court either to note probable jurisdiction in this cause and grant *certiorari* in the companion cause of *Castle, et al.*, v. *Hayes Freight Lines, Inc.*, No. 697, or if *certiorari* be not granted

in that cause, that this appeal be dismissed or the Illinois Supreme Court's judgment and decision be affirmed.

Respectfully submitted,

LATHAM CASTLE,
Attorney General of the State of Illinois.
160 North La Salle Street, Suite 900, Chicago (1), Illinois,
Attorney for Appellees.

JUNE 7, 1954.

Decisions Per Curiam.

No. 706. HAYES FREIGHT LINES, INC. *v.* CASTLE, ATTORNEY GENERAL, ET AL. Appeal from the Supreme Court of Illinois. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a

substantial federal question. *David Axelrod* for appellant. *Latham Castle*, Attorney General of Illinois, for appellees. Reported below: 2 Ill. 2d 58, 117 N. E. 2d 106.